

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

March 16, 2017

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

On behalf of the Center for Media and Democracy (CMD), I am writing to request records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq.

With this letter, we are formally requesting all records created, edited or otherwise transmitted between January 20, 2017 and March 16, 2017, by EPA employee David Schnare. It was reported by the media on March 16, 2017, quoting Mr. Schnare, that he has resigned his position at the EPA.

We note that in accordance with the FRA Amendments of 2014, the EPA Records Management Policy (CIO 2155.3) states that: “Records document the Agency’s business and can be found in all media such as paper, email, instant messaging (IM), text messages, telephone messages, voice mail messages, presentations, websites, social media (e.g., Facebook, Twitter, etc.), word processing documents, spreadsheets, and information systems.”

A search for records pursuant to this request should therefore include but is not limited to:

1. Emails, including any personal email accounts used for official business
2. Instant messaging (IM) records, including but not limited to Google chat, Skype, Facebook messaging
3. Smartphone messaging applications such as Signal, Confide, WhatsApp, Telegram, and Wire.
4. Text messages
5. Telephone messages
6. Voice mail messages
7. Photographs on either government issued or personal cell phones
8. Presentations, including cloud based services such as provided by Google
9. Direct messages on Twitter
10. Word processing records, including cloud based services
11. Documents, including any cloud based services

12. Records from organizational tools, including but not limited to Evernote, Slack and Basecamp

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.

We are requesting a fee waiver on behalf of CMD.[1] CMD is entitled to a fee waiver because it is a news media organization, and because this request for records concerns activities or operations of the government. Disclosure of the requested records will likely increase public understanding of government operations since CMD has the ability and the intention, through the means described below, to effectively convey information contained within the requested records to a broad public audience. [2]

Founded in 1993, CMD's investigative research and reporting has appeared in local and national publications such as the New York Times, the Guardian, and the Washington Post. CMD documents key facts in order to reveal the impact of policies on ordinary people, and has received various awards for its investigative reporting.[3] In addition to using the information from this FOIA request to generate news stories, CMD would distribute information obtained and inform the public at large through various online platforms. CMD publishes information and investigative findings on a near daily basis through CMD's reporting websites, PRWatch and ExposedbyCMD. CMD also keeps its 8,500 twitter followers apprised of important policy issues. CMD is eligible for a fee waiver because the information requested will contribute to the public understanding of government operations. CMD has no commercial interest in this information.

Should this request for fee waiver be denied, we authorize \$50 in costs to be expended by for costs of duplication[4] of records. Please contact me prior to exceeding the \$50 limit. Pursuant to FOIA and EPA regulations, the agency has 20 days to fulfill this request and must undertake a search reasonably calculated to uncover all relevant documents.[5] Any segregable portion of records not excluded under FOIA exemptions must be released.[6] Partially disclosed records should be marked so that the amount and location of deleted information is apparent as well as the reason and explanation that the agency maintained an exemption.[7]

Thank you for your time and effort in processing this FOIA request. In order to expedite the flow of information, CMD would like to receive documents on a rolling basis. Please contact us with any questions regarding this request.

Sincerely,

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[1] FOIA's fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14,298 (Sept. 30, 1986) (statement of Sen. Leahy))

[2] *See* 40 C.F.R. 2.107; *see also Friends of the Coast Fork v. United States DOI*, 110 F.3d 53, 55 (9th Cir. 1997) (interpreting the fee waiver provision as a liberally construed multi-factor balancing test).

[3] *See* Center for Media and Democracy, About Us <http://www.prwatch.org/cmd> (last visited Mar. 17, 2016).

[4] *See* 40 C.F.R. 2.107(c).

[5] *See* 5 U.S.C. § 522 (a)(6)(a)(i); 40 CFR 2.104.

[6] *See* 5 U.S.C. § 522(b).

[7] *See Chesapeake Bay Found. v. U.S. Army Corps. of Eng'rs.*, 677 F. Supp. 2d 101, 109 (D.D.C. 2009)(requiring evidence of agency compliance with segregability obligations).